

## **405 KAR 1:070. Postmining land use.**

RELATES TO: KRS 350.405

STATUTORY AUTHORITY: KRS 350.028

NECESSITY, FUNCTION, AND CONFORMITY: KRS 350.028 requires the Environmental and Public Protection Cabinet to adopt rules and administrative regulations for the strip mining of coal. This administrative regulation sets forth requirements relating to the postmining use of land.

Section 1. General. All disturbed areas shall be restored in a timely manner to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or to higher or better uses achievable under criteria and procedures of this administrative regulation.

Section 2. Determining Premining Land Use. (1) The premining land uses to which the postmining land use is compared shall be those uses which the land previously supported if the land had not been previously mined and had been properly managed.

(2) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best economic or public use that can be achieved and is compatible with surrounding areas.

(3) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(4) If the premining use of the land was changed within five (5) years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

Section 3. Land use is categorized as follows:

(1) Heavy industry. Manufacturing facilities, power plants, airports or similar facilities.

(2) Light industry and commercial services. Office buildings, stores, parking facilities, apartment houses, motels, hotels, or similar facilities.

(3) Public services. Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.

(4) Residential. Single- and multiple-family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than five (5) percent of the total land area of housing capacity, associated open space, and minor vehicle parking and recreation facilities supporting the housing.

(5) Agricultural or silvicultural.

(a) Cropland. Land used primarily for the production of cultivated and close-growing crops for harvest alone or in association with sod crops. Land used for facilities in support of farming operations are included.

(b) Rangeland. Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.

(c) Hayland or pasture. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.

(d) Forest land. Land with at least a twenty-five (25) percent tree canopy or land at least ten (10) percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.

(6) Impoundments of water. Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation, or water supply.

(7) Fish and wildlife habitat and recreation lands. Wetlands, fish and wildlife habitat, and areas

managed primarily for fish and wildlife or recreation.

(8) Combined uses. Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

Section 4. Criteria for Approving Alternative Postmining Land Uses. Change from one to another land use category or subcategory in premining to postmining constitutes an alternate land use and the applicant shall meet the requirements of this administrative regulation and all other applicable provisions of this chapter. Mountaintop removal operations must also meet the criteria of this administrative regulation in addition to the requirements of 405 KAR 1:240 of this chapter with regard to mountaintop removal. An alternative postmining land use shall be approved by the cabinet after consultation with the landowner or the land-management agency having jurisdiction over state or federal lands, if the criteria of this administrative regulation are met.

(1) The proposed land use is compatible with adjacent land use and where applicable, with existing local, state or federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall accompany the request for approval. The applicant shall obtain any required approval of local, state or federal land management agencies, including any necessary zoning or other changes necessarily required for the final land use.

(2) Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, projected land use trends, and markets and that include a schedule showing how the proposed use will be developed and achieved within a reasonable time after mining and be sustained. The cabinet may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the applicant, as appropriate, to provide them in a manner compatible with the applicant's plans.

(4) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the applicant as appropriate, if the postmining land use is to be developed by such parties.

(5) The plans are designed under the general supervision of a registered professional engineer or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the cabinet and appropriate state and federal fish and wildlife management agencies.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, shall be reviewed by the cabinet to assure that:

(a) There is a firm written commitment of the applicant or by the landowner or land manager to provide sufficient crop management after release of applicable performance bond to assure that the proposed postmining cropland use remains practical and reasonable;

(b) There is sufficient water available and committed to maintain crop production; and

(c) Topsoil quality and depth are shown to be sufficient to support the proposed use.

(10) The cabinet has provided by public notice not less than forty-five (45) days nor more than sixty (60) days for interested citizens and local, state and federal agencies to review and comment on the proposed land use. (4 Ky.R. 383; eff. 5-3-78; Am. 480; 5 Ky.R. 195; eff. 8-23-78; TAm eff. 8-9-2007.)